IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 853 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

JADEJA RANJITSINH KHUMANSINH

Appearance:

1. Criminal Appeal No. 853 of 1991

MR SS PATEL, APP, for the appellant.

MR UA TRIVEDI for the Respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 04/12/2002

ORAL JUDGEMENT

1. The present appeal challenges the judgment and order rendered by learned Judicial Magistrate, First Class, Gondal, in Criminal Case No.562 of 1984, on July 31, 1991, acquitting the respondents of offences under

Sections 7 and 16 of the Prevention of Food Adulteration Act.

2. The brief facts of the case are that, Food Inspector, Rajkot, visited the shop of the respondents on the 6th March, 1984, at about 10.00 A.M. After introducing himself, he purchased a sample of cow milk in presence of Panch witness from respondent No.1 for analysis, after following due procedure. After following the procedure of adding formalin, samples were sealed and sent for analysis. As per the report of the Public Analyst, the samples did not conform to the standards prescribed under the law. A complaint, therefore, was lodged by the Food Inspector against the respondents for offences punishable under Sections 7 and 16 of the Food Adulteration Act before learned Judicial Magistrate, First Class, at Gondal, which was registered as Criminal Case No.562 of 1984. The complaint was lodged after obtaining consent under Section 20 of the Food Adulteration Act. At the end of the trial, learned Judicial Magistrate, First Class, came to a conclusion that the respondents cannot be convicted due to the defect in the consent. This decision was arrived at on basis of a judgment of this High Court in the case of Ramanbhai Shivabhai Prajapati v. State of Gujarat, 1990(2) GLH 576, wherein it was held that where reasons for granting sanction are not recorded, the prosecution would be rendered invalid.

3. The State has preferred this appeal on the ground that the said judgment in the case of Ramanbhai Shivabhai Prajapati (supra) came to be reversed by a Division Bench of this Court by judgment that was rendered in Harshvadan Dahyalal Sevak v. Nareshbhai Devandas Vaghvani and Another, 1991 (2) GLH 615. It is, therefore, urged that the Trial Court has committed an error in acquitting the respondents on basis of a judgment which has been reversed by a Division Bench subsequently.

4. Learned Additional Public Prosecutor, Mr. Patel, appearing for the appellant, submitted that the Division Bench judgment was rendered on the 12th July, 1991, whereas the Trial Court judgment is dated the 31st July, 1991. The Trial Court was, therefore, bound by the said Division Bench judgment and ought to have acted on it rather than proceeding on basis of the reversed judgment of a learned Single Judge. Mr. Patel, therefore, submitted that this appeal may be allowed.

5. Countering the contentions raised by Mr. Patel, learned Advocate, Mr. Trivedi, submitted that the

learned Magistrate, when he delivered the judgment, would not have known the judgment rendered by a Division Bench of this Court within 20 days, as it was not reported in any journal. The judgment was rendered by a Division Bench on the 12th July, 1991 and the Trial Court delivered the judgment on the 31st July, 1991. Therefore, when the Trial Court delivered the judgment, it was governed by the reversed judgment by a learned Single Judge in case of Ramanbhai Shivabhai Prajapati (supra), which was then prevailing. Mr. Trivedi submitted that, if the Rojkam is seen, the entire trial was conducted prior to the delivery of the reversing judgment by the Division Bench in case of Harshvadan Dahyalal Sevak (supra). The cross-examination was also conducted keeping in light the principles laid down by the reversed judgment and, therefore, a subsequent change in legal position may not be considered for entertaining this acquittal appeal. Mr. Trivedi submitted that the offence is of 1984, the judgment was rendered in 1991 and, therefore, the Court may not interfere with the judgment of acquittal after about 20 years. In support of his say, he has relied on the decisions of this Court rendered in Arvindkumar Trikamlal Raval v. Ratilal Hemaji and Another, 1994(2) GLR 1177 and State of Gujarat v. Naranbhai Shamji Patel and Others, 2002(1) GLH 296, wherein under similar circumstances, the Court did not interfere with the acquittal. He, therefore, urged that the appeal may be dismissed.

6. The Court has considered rival side contentions and has gone through the record and proceedings, and it appears that, the Court is required to consider whether doctrine of prospective overruling can be made applicable to the present case or not.

7. It is not in dispute that in Ramanbhai Shivabhai Prajapati (supra), this Court expressed a view that sanctioning authority while granting sanction under Section 20 of the Prevention of Food Adulteration Act must record reasons for giving sanction and, if reasons are not given, it would invalidate the launching of prosecution and, therefore, it would be bad in the eyes of law. The said judgment was holding the field till a different view was taken by a Division Bench of this Court in case of Harshvadan Dahyalal Sevak (supra), wherein it is held that it is not necessary to record reasons while giving consent to prosecute a person, as envisaged under Section 20 of the Food Adulteration Act. The decision of the learned Single Judge in Ramanbhai Shivabhai Prajapati, thus, came to be reversed. The Division Bench judgment was rendered on 11th/12th July,

1991 and came to be reported in 1991(2) GLH 615. The Division Bench judgment was, therefore, delivered about 19 days prior to the judgment by the learned Magistrate, which is impugned herein. A perusal of the Rojkam indicates that the entire trial was over before the 12th July, 1991 excepting the hearing of arguments. It is nobody's case that the judgment of the Division Bench was brought to the notice of the learned Judicial Magistrate (First Class), Gondal and, taking a reasonable view of the matter, it cannot be said that the judgment was rendered by the learned Judicial Magistrate (First Class) on basis of a reversed judgment because the factum of reversal must not have come to his knowledge considering the dates in question. The judgment was rendered on the law prevailing then for all practicable purposes and to the best of knowledge of all concerned. Even the appellant does not claim to have brought the same to the notice of the learned J.M.F.C. It would not be appropriate to conclude (it is not even contended by the learned Additional Public Prosecutor - in all fairness) that the judgment was delivered in neglect of reversing judgment nor would it be said that but for reasonable care, learned J.M.F.C. would have known the reversing judgment by this Court, considering the time factor. The situation is, therefore, almost similar to the situation in the case of State of Gujarat v. Naranbhai Shamji Patel (supra) and Arvinkumar Trikamlal Raval v. Ratilal Hemaji and Another (supra), where this Court has invoked the doctrine of prospective overruling, excepting that, in those cases the impugned judgment was rendered prior to the overruling/reversing judgment, whereas in the instant case, the impugned judgment is rendered within a few days of the overruling judgment, but without the said judgment being brought to the notice to the Trial Court and, therefore, in view of this Court, for all practicable purposes, the judgment cannot be said to have been rendered on basis of the overruled judgment without justification.

8. It is also to be considered that the entire trial, including the cross-examination of the witnesses, was over before the reversing judgment was delivered by the Division Bench of this Court. A perusal of the deposition of the witnesses indicates that the cross-examination was conducted in light of the ratio laid in the reversed judgment, which was prevailing as the law of the land and, if subsequent reversal is permitted to set aside the judgment of the Trial Court, it would cause prejudice to the interest of the respondents.

9. Other relevant factor that is required to be considered is that the offence is of 1984, the trial was over and judgment of acquittal was rendered on the 31st July, 1991 and today is the 4th December, 2002. Almost 20 years have passed since the offence and almost 11 years have passed since acquittal. Therefore, although technically the respondents can be said to be guilty of the offence, it would be neither just nor proper to order them to undergo any substantive sentence or to pay fine nor would it be appropriate to send the matter back for a fresh trial to enable the respondents to cross-examine the witnesses in light of the changed position of law.

10. In view of the decision in Food Inspector, Calicut Corporation v. Cherukatill Gopalan and Another, 1972 FAC 9, which was followed by this Court Arvindkumar Trikamlal Raval (supra), this Court is not inclined to set aside the order of acquittal recorded by the Trial Court but, at the same time, the respondents need to be held technically guilty and the appeal deserves to be allowed only to this limited purpose.

11. It has to be, therefore, clearly held that the respondents-original accused would be technically guilty under the altered legal position, but it would not be possible to set aside the orders of acquittal passed in favour of the respondents by the Court below. The appeal would, therefore, succeed only in part on the technical point that the respondent is found technically guilty. No order is required to be passed directing the respondents to surrender or to undergo any sentence or to pay any fine.

12. In the result, the appeal is allowed only to the extent that respondents herein are found to be technically guilty of the offence for which they were charged, but without any liability of undergoing sentence or paying any fine. Order accordingly.

[A. L. DAVE, J.]

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